

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BANK OF AMERICA, N.A.,

Plaintiff

V.

THE VILLAS COMMUNITY
ASSOCIATION, et al.,

Defendants

Case No.: 2:16-cv-00516-APG-NJK

Order Granting Motion for Default Judgment

[ECF No. 89]

Cross-claimant SFR Investments Pool 1, LLC (SFR) moves for default judgment against cross-defendant Dorothy K. Lopez.¹ ECF No. 89. Obtaining a default judgment under Federal Rule of Civil Procedure 55 is a two-step process. *See Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). First, “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” Fed. R. Civ. P. 55(a). After default is entered, a party may seek entry of default judgment under Rule 55(b).

Upon entry of default, I take as true the factual allegations in the non-defaulting party's complaint, except those related to the amount of damages. Fed. R. Civ. P. 8(b)(6); *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). Nonetheless, "[e]ntry of default does not entitle the non-defaulting party to a default judgment as a matter of right." *Warner Bros. Entm't Inc. v. Caridi*, 346 F. Supp. 2d 1068, 1071 (CD. Cal. 2004) (citation omitted). The "general rule [is] that default judgments are ordinarily disfavored. Cases should be decided upon

¹ I ordered SFR to establish subject matter jurisdiction over the cross-claim. Based on the information provided in SFR's motion, diversity jurisdiction exists.

1 their merits whenever reasonably possible.” *Eitel*, 782 F.2d at 1472 (citing *Peno v. Seguros La*
2 *Comercial, S.A.*, 770 F.2d 811, 814 (9th Cir. 1985)). Whether to grant a default judgment lies
3 within my discretion. *Id.*

4 I consider the following factors in determining whether to grant a default judgment:
5 (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff’s substantive claims;
6 (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the
7 possibility of a dispute concerning material facts; (6) whether the default was due to excusable
8 neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring
9 decisions on the merits. *Eitel*, 782 F.2d at 1471-72.

10 The clerk of court entered default against Lopez. ECF No. 83. Lopez has not appeared in
11 this case. Thus, there is no procedural impediment to entering a default judgment.

12 The first *Eitel* factor considers whether SFR will suffer prejudice if a default judgment is
13 not entered. *See PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002);
14 *Next Gaming, LLC v. Glob. Gaming Grp., Inc.*, No. 214-CV-00071-MMD-CWH, 2016 WL
15 3750651, at *3 (D. Nev. July 13, 2016). Because Lopez is not participating in this case, if
16 default judgment is not entered, SFR will be unable to pursue its claim against her. This factor
17 weighs in favor of entry of default judgment.

18 The second and third *Eitel* factors examine whether the “plaintiff state[s] a claim on
19 which the plaintiff may recover.” *Danning v. Lavine*, 572 F.2d 1386, 1389 (9th Cir. 1978); *see*
20 *also* Fed. R. Civ. P. 8. SFR’s cross-complaint seeks a declaration that the HOA foreclosure sale
21 extinguished Lopez’s interest in the property. SFR alleges that it acquired the property by
22 successfully bidding for it at a properly conducted, publicly held HOA foreclosure sale. ECF No.
23 24 at 9-15. I must accept these allegations as true. Fed. R. Civ. P. 8(b)(6); *TeleVideo*, 826 F.2d

1 at 917-18. At the time of this foreclosure sale, a properly conducted HOA foreclosure sale
2 extinguished the prior homeowners' interest and vested title in the purchaser "without equity or
3 right of redemption." Nev. Rev. Stat. § 116.31166 (2014). Thus, the second and third *Eitel*
4 factors weigh in favor of the entry of a default judgment declaring that Lopez's interest in the
5 property has been extinguished.

6 In assessing the fourth *Eitel* factor, I consider "the amount of money requested in relation
7 to the seriousness of the defendant's conduct, whether large sums of money are involved, and
8 whether 'the recovery sought is proportional to the harm caused by [the] defendant's conduct.'" *Curtis v. Illumination Arts, Inc.*, 33 F. Supp. 3d 1200, 1212 (W.D. Wash. 2014) (quoting
9 *Landstar Ranger, Inc. v. Earth Enters., Inc.*, 725 F. Supp. 2d 916, 921 (N.D. Cal. 2010));
10 *PepsiCo.*, 238 F. Supp. 2d at 1176. SFR's request for a declaration that Lopez's interest in the
11 property is extinguished is proportional to the effect of a properly conducted HOA foreclosure
12 sale. SFR does not seek any monetary relief against Lopez. Thus, the fourth *Eitel* factor is
13 satisfied as to the declaratory relief requested.
14

15 The fifth *Eitel* factor weighs the possibility of a dispute regarding material facts in the
16 case. *PepsiCo.*, 238 F. Supp. 2d at 1177. Lopez's failure to respond suggests there are no
17 disputed material facts. Thus, the fifth *Eitel* factor weighs in favor of entry of default judgment.

18 The sixth *Eitel* factor considers whether the defendants' defaults are due to excusable
19 neglect. *PepsiCo.*, 238 F. Supp. 2d at 1177. SFR made multiple attempts to serve Lopez and
20 ultimately had to serve by publication. ECF Nos. 46, 51, 52. The clerk of court entered default
21 against Lopez in August 2019 and she still has not appeared. ECF No. 83. There is no evidence
22 before me that the failure to respond is due to excusable neglect. *See United States v. High*
23 *Country Broad. Co.*, 3 F.3d 1244, 1245 (9th Cir. 1993) (per curiam) (holding that it was

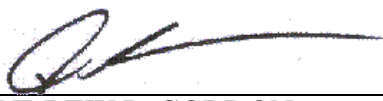
1 “perfectly appropriate” for the district court to enter default judgment against a corporation that
2 failed to appear in the action). Given the time period during which Lopez had notice of this case
3 yet failed to appear, it is unlikely that she failed to respond due to excusable neglect. Thus, the
4 sixth *Eitel* factor weighs in favor of entry of default judgment.

5 Finally, the seventh *Eitel* factor takes into account the policy favoring a decision on the
6 merits. “Cases should be decided on their merits whenever reasonably possible.” *Eitel*, 782 F.2d
7 at 1472. But Lopez’s failure to respond to the complaint “makes a decision on the merits
8 impractical, if not impossible.” *PepsiCo, Inc.*, 238 F. Supp. 2d at 1177. Thus, while this final
9 *Eitel* factor always weighs against an entry of default judgment, it does not preclude me from
10 entering a default judgment. A decision on the merits is desirable, but under these
11 circumstances, default judgment is warranted.

12 I THEREFORE ORDER that the cross-claimant SFR Investments Pool 1, LLC’s motion
13 for default judgment against cross-defendant Dorothy K. Lopez (**ECF No. 89**) is **GRANTED**.
14 The clerk of court is instructed to enter judgment in favor of SFR Investments Pool 1, LLC and
15 against Dorothy K. Lopez as follows: It is hereby declared that the homeowners association’s
16 non-judicial foreclosure sale conducted on September 12, 2014 extinguished any interest
17 Dorothy K. Lopez had in the property located at 6627 Babys Tear in Las Vegas, Nevada.

18 I FURTHER ORDER the clerk of the court to enter judgment consistent with this order
19 and my prior order on summary judgment (ECF No. 88) and to close this case.

20 DATED this 20th day of February, 2020.

21
22 
23 ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE